48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1448.

BOUNDARIES OF CERTAIN LANDS IN SAN MATEO COUNTY, CALIFORNIA.

MAY 7, 1884.—Referred to the House Calendar and ordered to be printed.

Mr. LEWIS, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 70.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 70) to authorize the correction of boundaries of certain lands in San Mateo County, California, have considered the same, and submit the following report:

This case has been favorably reported in the Forty-first, Forty-second, Forty-third, Forty-fifth, Forty-sixth, and Forty-seventh Congresses, and passed the House in the Forty-fifth Congress. The committee ado pts the report made from the Committee on Private Land Claims to the Forty-seventh Congress, as follows:

The parties seeking relief under this bill claim lands the title to which was derived through the grant of the Mexican authorities to Juan Coppinger, known as the Canada de Raimundo rancho, situated in San Mateo County, in the State of California, and which lands they claim have been erroneously included in the survey, location, and patent of the Pulgas rancho, in said county, which lies between it and the Bay of San Francisco; the west line of the Pulgas rancho being the east line of the Canada de Raimundo rancho, as all agree. The title to the Pulgas rancho is also derived through a grant of the Mexican authorities to the heirs of Don Louis Arguello.

The validity of neither of these grants is disputed by those claiming title under the other; and the validity of neither is disputed by the United States, or any third party, but each has been confirmed by the land commission established to settle private land claims in California, and upon appeal by the courts, as provided by law, since the territory of California was deeded to the United States by Mexico.

The original grant of the Pulgas rancho to the Arguello heirs was made on the 27th day of November, 1835, by José Castro, political chief and governor of Upper California, by the following description, to wit:

"The tract known under the name of Las Pulgas, the boundaries of which are: On the south, the creek San Francisquito; on the north, that of San Mateo; on the east, the estuaries; and on the west, the Canada Raimundo. The tract of which mention is made is of four leagues in latitude and one of longitude."

The creeks San Francisquito and San Mateo may be said to flow parallel to each other into the Bay of San Francisco, forming the north and south boundaries of Las Pulgas, the estuaries or bay forming the east boundary, and a line parallel to and one league west of the bay forming the west line thereof, as is claimed by those deriving title through the Coppinger grant, or Canada de Raimundo rancho.

The grant of the Canada de Raimundo rancho to Juan Coppinger was made on August 4, 1840, by J. B. Alvorado, then governor of Upper California, by the following description, and has also been confirmed as a valid grant, to wit:

"The place known as Canada de Raimundo, bordering on the west by the Sierra Morena; on the east by the Rancho de las Pulgas; on the south by that of Señor Maximo Martinez; and on the north by the lagoon."

It is very apparent from the descriptions in these grants that the location of the east line of the Canada de Raimundo rancho is dependent on the location of the west

line of the Pulgas rancho; and it is equally apparent that if the west line of the Pulgas rancho is floated to the westward, beyond where it has been established by the Supreme Court, it could only be so done by encroaching upon the Canada de Raimundo rancho.

It appears from the testimony of witnesses that prior to the cession of California to the United States by Mexico the west boundary of the Pulgas rancho was surveyed and marked, and was established at one league from the estuaries or Bay of San Francisco, and that the owners of the respective ranchos occupied and improved their respective properties up to the league line, by which term, for convenience of expression, we shall call the line in dispute between these grants.

The Supreme Court, in Arguello *vs.* The United States (18 Howard, page 543), confirms the testimony of these witnesses, and, speaking of the grant of the Pulgas rancho of November 27, 1835, establishes that juridical possession of the Pulgas rancho was given by the Mexican authorities, establishing the league line as the western boundary, in the following language:

"It gives the boundaries of the tract known as Las Pulgas, namely: On the south the creek San Francisquito; on the north the San Mateo; on the east the estuary; on the west the Canada de Raimundo, four leagues in length and one in breadth. The Mexican authorities have themselves given a construction to this grant in 1840, when they granted the Canada de Raimundo to Coppinger, calling for Las Pulgas as its eastern boundary. Moreover, juridical possession was given to the Arguellos, *establishing the western boundary of the Las Pulgas one league west of the estuary or Bay of San Francisco.*"

It appears that about the year 1846 Coppinger conveyed to Dennis Martin a large tract in the southeast portion of Canada de Raimundo, and up to within one league from the bay, by deed that was duly recorded, and that Coppinger remained in possession of the residue thereof until his death, probably in 1848; that Jennie Martin took possession of this said purchase, and made valuable improvements thereon to the value of $75,000, with the full knowledge of the owners of the Pulgas rancho, and continued to be and was in possession thereof at the time of the making of the treaty of Guadalupe Hidalgo. By this treaty the United States assumed and undertook to protect the title of all those who held perfect titles under the Mexican Government, and to perfect the title of those that were inchoate and imperfect, and in the act by which California was admitted into the Union, that State was prohibited from assuming that power or discharging that duty. It is therein provided—

"That the State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of the same, shall be impaired or questioned." (9 Stats. at Large, p. 452.)

Congress further, by act of March 3, 1851 (9 Stats. at Large, p. 631), assumed control of all lands in California, and provided that all private land claims should be presented to a board of land commissioners for confirmation, which board was provided by said act to be constituted; the decision of which board might be appealed from by either party to the United States district court, and that from thence appeal could be taken by either party to the Supreme Court, and that when a decision was finally had in favor of a claimant his land should be surveyed; and that upon the certificate of the surveyor-general a patent should issue therefor. The owners of the Pulgas rancho first petitioned the land commissioners for a confirmation of their grant by the following description, some of the lines and calls of which had never before appeared in any document or proceeding, to wit:

"The tract contains twelve square leagues of land, and having a front on the Bay of San Francisco of four leagues, bounded south only by a creek called San Francisquito, and northerly by the San Mateo, and extending back from the bay some three leagues to the Sierras or range of mountains so as to include the valley or Canada Raimundo."

By the description heretofore given of the Canada de Raimundo rancho, it will be seen that its western boundary is the same exactly as the western boundary now claimed by the owners of the Pulgas rancho, to wit, the "Sierra Morena," and that the owners of the Pulgas rancho in their petition have floated their western boundary across the Canada de Raimundo, three leagues away, to the mountain, and instead of claiming simply their four leagues of land as originally granted to them proposed to swallow up the entire Coppinger grant, together with all improvements placed thereon by himself and grantees.

This extravagant and unfounded claim was disallowed by the land commissioners. The case was appealed to the district court, and it was there disallowed. It was then appealed to the Supreme Court, which court at December term, 1855, also disallowing the claim in the petition, confirmed the grant by the following certain and definite boundaries, to wit:

"On the south by the arroyo or creek of San Francisquito; on the north by the creek San Mateo; on the east by the estuaries or waters of the bay of San Francisco;

on the west by the eastern borders of the Valley Canada de Raimundo; said land being of the extent of four leagues in length and one in breadth, be the same more or less."

And expressly excluded the lands petitioned for by the owners of the Pulgas rancho not included in the boundaries so fixed and established by the court. (18 Howard, p. 549.)

Afterwards the Supreme Court having occasion to recur to its foregoing language, fixing the boundaries and limiting the extent of the Pulgas rancho, said:

"The western boundary line of Las Pulgas, as adjudged by the decree of this court, had two several points of description to fix its location—one uncertain and vague, the other admitting of mathematical certainty. The call of the Canada de Raimundo on the west is as vague as the Sierra Moreno, a chain of mountains. But the breadth of a league from the estuary or bay was a certain and definite boundary on the east, and showed conclusively the precise location of the line.

"Las Pulgas could claim to extend but a league west, whether that reached to the hills on the east of the valley or not, and was entitled to have the league in breadth, whether it carried the line over the hills or not. Coppinger's grant can claim only what is left after satisfying Las Pulgas; which calls for a certain quantity and a certain boundary." (24 Howard, p. 275.)

We are satisfied the correct location of the west line of Pulgas rancho is one league west of and parallel with the Bay of San Francisco, and that the league line is the east line of Canada De Raimundo rancho. Yet the surveyor-general of California, John C. Hays, on the 19th day of December, 1856, returned to the General Land Office his report of a pretended survey of Las Pulgas rancho, including some 35,240 acres of land, whereas in the Pulgas rancho, with its west boundary but one league, from the bay, it contains only about 18,000 acres of land; and on the 2d day of October, 1857, a patent was issued to Arguella's heirs by the Commissioner of the Land Office, for the land embraced in Hays's survey; which survey was not limited to the amount specified in the original grant or that specified in the decree of the Supreme Court of the United States confirming the grant; and which survey, instead of locating the west line of said rancho one league west of the bay, as it had been fixed by the Supreme Court, located it three leagues west of the southerly end, one and four-tenths leagues at the center, and one and six-tenths leagues at the northerly end.

The owners of the Canada de Raimundo protested against the manifest wrong and encroachment on their eastern boundary, and attempted by petition filed in the United States district court of California to protect themselves under the provisions of the thirteenth section of the act of March 3, 1851, which provides that if the title of the claimant to such lands is contested by any other person it shall be lawful for such contestant, by petition in such court, to contest the issuing of a patent therefor, and that the district judge might in the hearing of such petition restrain the party at whose instance the claim to the land has been confirmed from suing out a patent for the same until the title thereto shall have been finally decided.

Judge Hoffman, by an opinion delivered in said case March 19, 1857, denied the application on the ground that the owners of Canada de Raimundo rancho did not contest the title to the Pulgas rancho, neither did they dispute the boundaries thereof as established by the courts, but simply denied that the surveyor-general had located the line dividing the two ranchos in accordance with their decrees, and that their petition did not bring them within the provisions of said section 13. The court uses this language in disposing of petitioners' application:

"But it is alleged that the land surveyed is not the tract confirmed to him, but includes other lands belonging to the petitioners.

"The title of the tract so included is of course disputed, but the question is, does this present a case within the meaning of the act where the title of the claimant to the land is disputed?

"The natural construction of the claim would evidently confine its operations to a case where the grant had been confirmed to a claimant where the title to the land so confirmed was disputed, and such seems by the debates to have been the only case contemplated by the author of the law. The expression 'such lands' appears by legal as well as grammatical construction, to refer to the lands as confirmed to the claimant, and not to the lands as surveyed and delineated on the plat.

"Had Congress intended the patent to be stayed whenever an adjoining proprietor might be dissatisfied with the location and survey, they would probably have said: 'If the title to the lands as surveyed or to any part of them be disputed'; but these words are not in the law, and it would seem an unwarrantable extension of its terms to apply it to a case where the title of the claimant to the rancho confirmed is admitted, and it is merely contended that the rancho does not in reality embrace, when its boundaries are correctly established, all the lands included within the boundaries as surveyed."

Thereupon a patent was issued to the claimants of the Pulgas rancho upon said

erroneous survey, encroaching upon and absorbing a large portion of the Canada de Raimundo rancho.

Have the claimants of the latter any remedy in the courts by which the wrong can be righted? If they have, they ought not to be here asking relief of Congress. The answer to this question must be determined by the character, operation, and effect of the patent. They have been often judicially passed upon, and are well recognized.

"The patent is conclusive evidence of the right of the patentee to the land described therein, not only between himself and the United States, but as between himself and a third person who has not a superior title from a source of permanent proprietorship." (Waterman *vs.* Smith, 13 Cal., 419.)

"By the act of March 3, 1851, the new Government designated the manner and conditions under which the right and power of location would be exercised, and declared the effect which should be given to the proceedings had. The defendants, taking whatever interest they may possess in subordination to the future action of the Government, old or new, in determining the location of the elder grant, are in no position to question those proceedings. As the Government acted in this matter only through its appointed tribunals and officers, if it shall discover that imposition and fraud have been practiced upon them, and have produced a result which otherwise would not have been obtained, it may itself institute proceedings to vacate the confirmation and patent, and annul or correct the location. But unless the Government interferes in the matter, the defendants, as junior grantees, are remediless. Their title to the premises was not such as to enable them to resist the action of the Governmett in the location of the elder grant. They are not, therefore, 'third persons' within the meaning of the fifteenth section of the act of Congress.

"By the act of March 3, 1851, the Government provided the means for the ascertainment of the character and extent of the titles alleged to have existed previous to the cession. It established a tribunal before which all claims to land were to be investigated; prescribed rules for its action; required evidence to be presented respecting the claims; authorized appeals from the decisions of the tribunal, first to the district and then to the supreme court, and appointed officers to survey and measure off the land when the validity of the claims had been finally affirmed. Informed by the proceedings thus had before its tribunals and officers, the Government regulated its conduct, and to the successful claimant issued its patent. This instrument, as we have stated, is the record of the Government upon the title of the patentee to the land described therein, declaring the validity of that title, and that it rightfully attaches to the land. Upon all the matters of fact and law essential to authorize its issuance, it imports absolute verity; and it can only be vacated and set aside by direct proceedings instituted by the Government, or by parties acting in the name and by the authority of the Government. Until thus vacated it is conclusive, not only as between the patentee and the Government, but between parties claiming in privity with either by title subsequent. * * * (Leese *vs.* Clark, 18 Cal., 571–575.)

"The United States took California bound by the established principles of public law, and by express stipulation of the treaty, to protect all private rights of property of the inhabitants. The obligation rested for its fulfillment in the good faith of the Government and required legislative action. It could, therefore, only be discharged in such manner, and at such times, and upon such conditions as Congress might in its discretion direct. In its discharge, such action was required as would enable the inhabitants to assert and maintain their rights to their property in the courts of the country, as fully and absolutely as though their titles were derived directly from the United States. Where the titles were imperfect, and such was the condition of nearly all the titles held in the country, further action by way of confirmation or release from the new Government was essential. With respect to all such titles, and indeed with respect to all matters dependent upon executory engagement of the Government, the ordinary courts of the United States, whether of law or equity, were equally powerless; they were without jurisdiction, and utterly incompetent to deal with them." (Page 11 of printed opinion by Judge Field, United States *vs.* Benjamin Flint, United States circuit court of California.)

"The treaty is a contract made by the nation acting through the political branch of its Government. Its execution is confided to that branch of the Government alone. And until it has provided the means and ordained the mode of its execution, no court has the authority to decide what cases fall within its provisions, or what titles the United States is bound to respect.

"*A fortiori* must the ordinary courts be without jurisdiction, when the political power has confided the whole subject to special tribunals, whose final decree it has declared shall be conclusive.

"These parties having been divested of their legal title by a proceeding to which they were not parties and over which they could not exercise any control, are still the equitable owners of these lands, and the persons in whom the legal title is by this patent vested should be treated as trustees for the benefit of those having the equitable title.

"That they have bought and held these lands in good faith is evidenced by their

original purchase and title-deed, and by their long occupancy and substantial improvements.

"They were transferred by the act of annexation from one sovereignty to another, and every principle of justice, humanity, and civilization requires that the Government extending its jurisdiction over them should extend its protection as well as its authority.

"The petitioners have not had a day in court, or an opportunity to defend themselves against the overshadowing claim of the Pulgas rancho. Their grantor did not contest the location of the line on appeal to the Supreme Court, and that question has never been presented to that tribunal or adjudicated by it. The only question that seems to have been litigated is, as to the validity of the respective grants, and not as to their location or boundaries, except as that question has incidentally occurred in the description of the land as contained in the grant.

"Unless the petitioners are permitted to contest the correctness of the location of the exterior lines of the Pulgas ranch and the survey of the grant, they will be forced to relinquish their claim to their lands, which they bought in good faith of a grantor having a valid Mexican title, and have occupied for more than a quarter of a century, and upon which they have made valuable and expensive improvements."

The committee recommend the passage of the bill.